

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ISAIAH GUNARTT,

Plaintiff,

v.

ILLINOIS DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:10-cv-00767-JPG-PMF

ORDER

This matter comes before the Court on Magistrate Judge Philip M. Frazier's Report and Recommendation ("R & R") (Doc. 40) of October 24, 2011, wherein it was recommended defendant Houer's motion to dismiss (Doc. 24) be denied. The plaintiff, Isaiah Gunartt, filed a response in opposition to the motion to dismiss (Doc. 27). After reviewing a magistrate judge's report and recommendation, the Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in the report. Fed. R. Civ. P. 72(b). The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.*

The Court must review *de novo* the portions of the report to which specific written objections are made. *Id.* "If no objection or only partial objection is made, the district court Judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). No objections were made to the R&R by either party and after reviewing it, the Court finds its consideration of defendant Houer's motion to dismiss to be accurate. There are remaining factual issues which must be resolved before a motion to dismiss for failure to exhaust administrative remedies could be appropriate.

Accordingly, the Court hereby **ADOPTS** the R & R (Doc.40) **in its entirety** and **DENIES** defendant Houer's motion to dismiss. (Doc. 24).

IT IS SO ORDERED.

DATED: November 16, 2011

s./ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE